



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB0501

Introduced 02/01/07, by Rep. Jim Sacia

SYNOPSIS AS INTRODUCED:

New Act

Creates the Used Vehicle Buyer Protection Act. Prohibits a used vehicle dealer from selling or leasing a used vehicle unless he or she stipulates to the consumer any mechanical or technical defects or problem history of that particular make, model, and year of that vehicle. Requires a used vehicle dealer to provide the consumer with a written warranty containing the listed terms. Provides exclusions to the warranty's coverage. Provides remedies for the consumer and civil penalties against the used vehicle dealer for failure to honor a warranty. Provides for arbitration of disputes concerning the warranty. Requires a dealer to provide the consumer with a notice of his or her rights at the time of purchase or lease of a used motor vehicle.

LRB095 05165 LCT 25237 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Used
5 Vehicle Buyer Protection Act.

6 Section 5. Definitions. As used in this Act:

7 "Consumer" means the purchaser or lessee, other than for
8 purposes of resale, of a used motor vehicle primarily used for
9 personal, family, or household purposes and subject to a
10 warranty, and the spouse or child of the purchaser or the
11 lessee if either the motor vehicle or the lease of the motor
12 vehicle is transferred to the spouse or child during the
13 duration of any warranty applicable to the motor vehicle, and
14 any other person entitled by the terms of the warranty to
15 enforce the obligations of the warranty.

16 "Dealer" means any person or business that sells, offers
17 for sale, leases, or offers for lease a used vehicle after
18 selling, offering for sale, leasing, or offering for lease 3 or
19 more used vehicles in the previous 12-month period, but does
20 not include:

21 (1) a bank or financial institution except in the case
22 of a lease of a used motor vehicle;

23 (2) a business selling a used vehicle to an employee of

1 that business;

2 (3) a regulated public utility that sells at public
3 auction vehicles used in the ordinary course of its
4 operations, provided that any advertisements of those
5 sales conspicuously disclose the "as is" nature of the
6 sale;

7 (4) the sale of a leased vehicle to that vehicle's
8 lessee, a family member of the lessee, or an employee of
9 the lessee; or

10 (5) the State, its agencies, bureaus, boards,
11 commissions, and authorities, and all of the political
12 subdivisions of the State, including the agencies and
13 authorities of those subdivisions.

14 "Repair insurance" means a contract in writing for any
15 period of time or any specific mileage to refund, repair,
16 replace, maintain, or take other action with respect to a used
17 motor vehicle and that is regulated by the Department of
18 Insurance.

19 "Service contract" means a contract in writing for any
20 period of time or any specific mileage to refund, repair,
21 replace, maintain, or take other action with respect to a used
22 motor vehicle and provided at an extra charge beyond the price
23 of the used motor vehicle or of the lease contract for the used
24 motor vehicle.

25 "Used motor vehicle" means a motor vehicle, excluding motor
26 homes and off-road vehicles, which has been purchased, leased,

1 or transferred either after 18,000 miles of operation or 2
2 years from the date of original delivery, whichever is earlier.

3 "Warranty" means any undertaking in connection with the
4 sale or lease by a dealer of a used motor vehicle to refund,
5 repair, replace, maintain, or take other action with respect to
6 the used motor vehicle and provided at no extra charge beyond
7 the price of the used motor vehicle.

8 Section 10. Vehicle history; written warranty required;
9 terms.

10 (a) No dealer shall sell or lease a used vehicle unless he
11 or she stipulates to the consumer any mechanical or technical
12 defects or problem history of that particular make, model, and
13 year of that vehicle.

14 (b) Except as provided for in subsection (c) of Section 20,
15 no dealer shall sell or lease a used motor vehicle to a
16 consumer without giving the consumer a written warranty that
17 shall at minimum apply for the following terms:

18 (1) If the used motor vehicle has 36,000 miles or less,
19 the warranty shall be at minimum 90 days or 4,000 miles,
20 whichever comes first.

21 (2) If the used motor vehicle has more than 36,000
22 miles, but less than 80,000 miles, the warranty shall be at
23 minimum 60 days or 3,000 miles, whichever comes first.

24 (3) If the used motor vehicle has 80,000 miles or more
25 but no more than 100,000 miles, the warranty shall be at a

1 minimum 30 days or 1,000 miles, whichever comes first.

2 (c) The written warranty shall require the dealer or his or
3 her agent to repair or, at the election of the dealer,
4 reimburse the consumer for the reasonable cost of repairing the
5 failure of a covered part. Covered parts shall at least include
6 the following items:

7 (1) The engine including all lubricated parts, water
8 pump, fuel pump, manifolds, engine block, cylinder head,
9 rotary engine housings, and flywheel.

10 (2) The transmission including the transmission case,
11 internal parts, and the torque converter.

12 (3) The drive axle including front and rear drive axle
13 housings and internal parts, axle shafts, propeller
14 shafts, and universal joints.

15 (4) The brakes including the master cylinder, vacuum
16 assist booster, wheel cylinders, hydraulic lines and
17 fittings, and disc brake calipers.

18 (5) The radiator.

19 (6) The steering including the steering gear housing
20 and all internal parts, power steering pump, valve body,
21 piston, and rack.

22 (7) The alternator, generator, starter, and ignition
23 system, excluding the battery.

24 (d) The repair or reimbursement shall be made by the dealer
25 notwithstanding the fact that the warranty period has expired,
26 provided the consumer notifies the dealer of the failure of a

1 covered part within the specified warranty period.

2 (e) The written warranty may contain additional language
3 excluding coverage:

4 (1) for a failure of a covered part caused by a lack of
5 customary maintenance;

6 (2) for a failure of a covered part caused by
7 collision, abuse, negligence, theft, vandalism, fire or
8 other casualty, and damage from the environment
9 (windstorm, lightning, road hazards, etc.);

10 (3) if the odometer has been stopped or altered such
11 that the vehicle's actual mileage cannot be readily
12 determined or if any covered part has been altered such
13 that a covered part was thereby caused to fail;

14 (4) for maintenance services and the parts used in
15 connection with those services such as seals, gaskets, oil,
16 or grease unless required in connection with the repair of
17 a covered part;

18 (5) for a motor tune-up;

19 (6) for a failure resulting from racing or other
20 competition;

21 (7) for a failure caused by towing a trailer or another
22 vehicle unless the used motor vehicle is equipped for
23 towing as recommended by the manufacturer;

24 (8) if the used motor vehicle is used to carry
25 passengers for hire;

26 (9) if the used motor vehicle is rented to someone

1 other than the consumer;

2 (10) for repair of valves or rings to correct low
3 compression or oil consumption that is considered normal
4 wear;

5 (11) to the extent otherwise permitted by law, for
6 property damage arising or allegedly arising out of the
7 failure of a covered part; and

8 (12) to the extent otherwise permitted by law, for loss
9 of the use of the used motor vehicle, loss of time,
10 inconvenience, commercial loss, or consequential damages.

11 Section 15. Failure to honor warranty.

12 (a) If the dealer or his or her agent fails to correct a
13 malfunction or defect as required by the warranty specified in
14 this Act that substantially impairs the value of the used motor
15 vehicle to the consumer after a reasonable period of time, the
16 dealer shall accept return of the used motor vehicle from the
17 consumer and shall refund to the consumer the full purchase
18 price or, in the case of a lease contract, all payments made
19 under the contract, including sales or compensating use tax,
20 less a reasonable allowance for any damage not attributable to
21 normal wear or usage and adjustment for any modifications that
22 either increase or decrease the market value of the vehicle or
23 of the lease contract. In the case of a lease contract, the
24 dealer shall cancel all further payments due from the consumer
25 under the lease contract. In determining the purchase price to

1 be refunded or in determining all payments made under a lease
2 contract to be refunded, the purchase price or all payments
3 made under a lease contract shall be deemed equal to the sum of
4 the actual cash difference paid for the used motor vehicle or
5 for the lease contract plus, if the dealer elects to not return
6 any vehicles traded-in by the consumer, the wholesale value of
7 any traded-in vehicle as listed in the National Auto Dealers
8 Association Used Car Guide, or in any other guide as may be
9 specified in rules adopted by the Secretary of State, as
10 adjusted for mileage, improvements, and any major physical or
11 mechanical defects in the traded-in vehicle at the time of
12 trade-in.

13 (b) The dealer selling or leasing the used motor vehicle
14 shall deliver to the consumer a written notice including
15 conspicuous language indicating that: (i) if the consumer is
16 entitled to a refund pursuant to this Act, the value of any
17 vehicle traded-in by the consumer; or (ii) if the dealer elects
18 to not return it to the consumer, for purposes of determining
19 the amount of the refund will be determined by reference to the
20 National Auto Dealers Association Used Car Guide wholesale
21 value, or any other guide as may be approved by the Secretary
22 of State, as adjusted for mileage, improvements, and any major
23 physical or mechanical defects, rather than the value listed in
24 the sales contract. The notice to the consumer shall contain
25 conspicuous language warning the consumer that failure to pay
26 any funds owed to the lienholder within 30 days will terminate

1 the dealer's obligation to provide a refund.

2 (c) Refunds shall be made to the consumer and lienholder,
3 if any, as their interests may appear on the records of
4 ownership kept by the Secretary of State. If the amount to be
5 refunded to the lienholder will be insufficient to discharge
6 the lien, the dealer shall notify the consumer in writing by
7 registered or certified mail that the consumer has 30 days to
8 pay the lienholder the amount that, together with the amount to
9 be refunded by the dealer, will be sufficient to discharge the
10 lien. If the consumer fails to make the payment within 30 days,
11 the dealer shall have no further responsibility to provide a
12 refund under this Act. Alternatively, the dealer may elect to
13 offer to replace the used motor vehicle with a comparably
14 priced vehicle, with an adjustment in price as the parties may
15 agree. The consumer shall not be obligated to accept a
16 replacement vehicle, but may instead elect to receive the
17 refund provided under this Section.

18 (d) It shall be an affirmative defense to any claim under
19 this Section that:

20 (1) the malfunction or defect does not substantially
21 impair the value; or

22 (2) the malfunction or defect is the result of abuse,
23 neglect, or unreasonable modifications or alterations of
24 the used motor vehicle.

25 (e) It shall be presumed that a dealer has had a reasonable
26 opportunity to correct a malfunction or defect in a used motor

1 vehicle, if:

2 (1) the same malfunction or defect has been subject to
3 repair 3 or more times by the selling or leasing dealer or
4 his or her agent within the warranty period, but the
5 malfunction or defect continues to exist; or

6 (2) the vehicle is out of service by reason of repair
7 or malfunction or defect for a cumulative total of 15 or
8 more days during the warranty period. The period shall not
9 include days when the dealer is unable to complete the
10 repair because of the unavailability of necessary repair
11 parts. The dealer shall be required to exercise due
12 diligence in attempting to obtain necessary repair parts.
13 Provided, however, that if a vehicle has been out of
14 service for a cumulative total of 45 days, even if a
15 portion of that time is attributable to the unavailability
16 of replacement parts, the consumer shall be entitled to the
17 replacement or refund remedies provided in this Act.

18 (e) The term of any warranty, service contract, or repair
19 insurance shall be extended by any time period during which the
20 used motor vehicle is in the possession of the dealer or his or
21 her duly authorized agent for the purpose of repairing the used
22 motor vehicle under the terms and obligations of the warranty,
23 service contract, or repair insurance.

24 (f) The term of any warranty, service contract, or repair
25 insurance, and the 15-day out-of-service period, shall be
26 extended by any time during which repair services are not

1 available to the consumer because of a war, invasion or strike,
2 fire, flood, or other natural disaster.

3 Section 20. Waiver void.

4 (a) Except as provided for in subsection (c) of this
5 Section, any agreement entered into by a consumer for the
6 purchase or lease of a used motor vehicle that waives, limits,
7 or disclaims the rights set forth in this Act shall be void as
8 contrary to public policy. Further, if a dealer fails to give
9 the written warranty required by this Act, the dealer
10 nevertheless shall be deemed to have given the warranty as a
11 matter of law.

12 (b) Nothing in this Act shall in any way limit the rights
13 or remedies that are otherwise available to a consumer under
14 any other law.

15 (c) Notwithstanding subsection (a) of this Section, this
16 Act shall not apply (i) to a used motor vehicle sold for, or in
17 the case of a lease where the value of the used motor vehicle
18 as agreed to by the consumer and the dealer is, less than
19 \$1,500, (ii) to a used motor vehicles with over 100,000 miles
20 at the time of sale or lease if the mileage is indicated in
21 writing at the time of sale or lease, or (iii) to a used motor
22 vehicle that the consumer purchases "as is", provided that the
23 consumer is informed of his or her rights under this Act and
24 waives those rights in writing. Further, this Act shall not
25 apply to the sale or lease of antique motor vehicles as defined

1 in Section 1-102.1 of the Illinois Vehicle Code.

2 Section 25. Time of delivery; location of warranty; notice.

3 The written warranty provided for in Section 10 and the written
4 notice provided for in Section 15 shall be delivered to the
5 consumer at or before the time the consumer signs the sales or
6 lease contract for the used motor vehicle. The warranty and
7 notice may be set forth on one sheet or on separate sheets. The
8 warranty and notice may be separate from, attached to, or a
9 part of the sales or lease contract. If the warranty and notice
10 are part of the sales or lease contract, they shall be
11 separated from the other contract provisions and each headed by
12 a conspicuous title.

13 Section 30. Arbitration and enforcement.

14 (a) If a dealer has established or participates in an
15 informal dispute settlement procedure that complies in all
16 respects with the provisions of Title 16, Code of Federal
17 Regulation, Part 713, the provisions of this Act concerning
18 refunds or replacement shall not apply to any consumer who has
19 not first resorted to that procedure. Dealers utilizing
20 informal dispute settlement procedures pursuant to this
21 Section shall insure that arbitrators participating in the
22 informal dispute settlement procedures are familiar with the
23 provisions of this Act and shall provide to arbitrators and
24 consumers who seek arbitration a copy of the provisions of this

1 Act together with the following notice in conspicuous 10-point
2 bold face type:

3 "USED CAR LEMON LAW BILL OF RIGHTS

4 1. If you purchase a used car for more than \$1,500 or
5 lease a used car where you and the dealer have agreed that
6 the car's value is more than \$1,500 from anyone selling or
7 leasing 3 or more used cars a year, you must be given a
8 written warranty.

9 2. If your used car has less than 36,001 miles, a
10 warranty must be provided for at least 90 days or 4,000
11 miles, whichever comes first.

12 3. If your used car has more than 36,000 miles but less
13 than 80,000 miles, a warranty must be provided for at least
14 60 days or 3,000 miles, whichever comes first.

15 4. If your used car has 80,000 miles or more but no
16 more than 100,000 miles, a warranty must be provided for at
17 least 30 days or 1,000 miles, whichever comes first.

18 5. Cars with over 100,000 miles are not covered.

19 6. If your engine, transmission, drive axle, brakes,
20 radiator, steering, alternator, generator, starter, or
21 ignition system (excluding the battery) are defective, the
22 dealer or his or her agent must repair or, if he or she so
23 chooses, reimburse you for the reasonable cost of repair.

24 7. If the same problem cannot be repaired after 3 or
25 more attempts, you are entitled to return the car and to

1 receive a refund of your purchase price or of all payments
2 made under your lease contract, including sales tax and
3 fees, minus a reasonable allowance for any damage not
4 attributable to normal usage or wear, and, in the case of a
5 lease contract, a cancellation of all further payments you
6 are otherwise required to make under the lease contract.

7 8. If your car is out of service to repair a problem
8 for a total of 15 days or more during the warranty period
9 you are entitled to return the car and receive a refund of
10 your purchase price or of all payments made under your
11 lease contract, including sales tax and fees, minus a
12 reasonable allowance for any damage not attributable to
13 normal usage or wear, and, in the case of a lease contract,
14 a cancellation of all further payments you are otherwise
15 required to make under the lease contract.

16 9. A dealer may put into the written warranty certain
17 provisions that will prohibit your recovery under certain
18 conditions; however, the dealer may not cause you to waive
19 any rights under the Used Vehicle Buyer Protection Act.

20 10. A dealer may refuse to refund your purchase price,
21 or the payments made under your lease contract, if the
22 problem does not substantially impair the value of your car
23 or if the problem is caused by abuse, neglect, or
24 unreasonable modification.

25 11. If a dealer has established an arbitration
26 procedure, the dealer may refuse to refund your purchase

1 price until you first resort to the procedure. If the
2 dealer does not have an arbitration procedure, you may
3 resort to any remedy provided by law and may be entitled to
4 your attorney's fees if you prevail.

5 12. As an alternative to the arbitration procedure made
6 available through the dealer, you may instead choose to
7 submit your claim to an independent arbitrator, approved by
8 the Attorney General. You may have to pay a fee for such an
9 arbitration. Contact the Attorney General's office to find
10 out how to arrange for independent arbitration.

11 13. If any dealer refuses to honor your rights or you
12 are not satisfied by the informal dispute settlement
13 procedure, complain to the Illinois Attorney General."

14 (b) A dealer shall have up to 30 days from the date of
15 notice by the consumer that the arbitrator's decision has been
16 accepted to comply with the terms of the decision. Provided,
17 however, that nothing contained in this Section shall impose
18 any liability on a dealer where a delay beyond the 30-day
19 period is attributable to a consumer who has requested a
20 particular replacement vehicle or otherwise made compliance
21 impossible within the period.

22 (c) Upon the payment of a prescribed filing fee, a consumer
23 shall have the option of submitting any dispute arising under
24 this Act to an alternate arbitration mechanism established
25 pursuant to the rules promulgated by the Attorney General. Upon

1 application of the consumer and payment of the filing fee, the
2 dealer shall submit to the alternate arbitration.

3 The alternate arbitration shall be conducted by a
4 professional arbitrator or arbitration firm appointed by and
5 under rules promulgated by the Attorney General. The rules for
6 appointment shall ensure the personal objectivity of its
7 arbitrators and the right of each party to present its case, to
8 be in attendance during any presentation made by the other
9 party, and to rebut or refute the presentation. In all other
10 respects, the alternate arbitration shall be governed by the
11 Uniform Arbitration Act.

12 (d) The notice required by subsection (a) of this Section,
13 entitled "Used Car Lemon Law Bill of Rights", shall be provided
14 to arbitrators and consumers who seek arbitration under this
15 Section.

16 (e) A dealer shall have 30 days from the date of mailing of
17 a copy of the arbitrator's decision to the dealer to comply
18 with the terms of the decision. Failure to comply within the
19 30-day period shall entitle the consumer to recover, in
20 addition to any other recovery to which he or she may be
21 entitled, a civil penalty of \$25 for each business day beyond
22 30 days up to \$500; provided that nothing in this Section shall
23 impose any liability on a dealer where a delay beyond the
24 30-day period is attributable to a consumer who has requested a
25 particular replacement vehicle or otherwise made compliance
26 impossible within the period.

1 (f) The Secretary of State or any person designated by him
2 or her may deny the application of any person for licensing
3 under Section 5-102 of the Illinois Vehicle Code or suspend,
4 revoke, or refuse to renew the license of a used vehicle dealer
5 under that Section, if the Secretary of State or his or her
6 designee determines that the applicant or licensee or any
7 officer, director, stockholder, or partner, or any other person
8 directly or indirectly interested in the business has
9 deliberately failed to pay an arbitration award, which has not
10 been stayed or appealed, rendered in an arbitration proceeding
11 pursuant to this Section for 60 days after the date of mailing
12 of a copy of the award to the licensee.

13 (g) In no event shall a consumer who has resorted to an
14 informal dispute settlement procedure be precluded from
15 seeking the rights or remedies available by law.

16 Section 35. Notice of consumer rights. At the time of
17 purchase or lease of a used motor vehicle from a dealer in this
18 State, the dealer shall provide to the consumer a notice,
19 printed in not less than 8-point bold face type, entitled "Used
20 Car Lemon Law Bill of Rights". The text of the notice shall be
21 identical with the notice required by subsection (a) of Section
22 30 of this Act.

23 Section 40. Attorney's fees. In an action brought to
24 enforce the provisions of this Act, the court may award

1 reasonable attorney's fees to a prevailing plaintiff or to a
2 consumer who prevails in any judicial action or proceeding
3 arising out of an arbitration proceeding. In the event a
4 prevailing plaintiff is required to retain the services of an
5 attorney to enforce collection of an award granted pursuant to
6 this Act, the court may assess against the dealer reasonable
7 attorney's fees for services rendered to enforce collection of
8 the award.

9 Section 45. Statute of limitations. Any action brought
10 pursuant to this Act shall be commenced within 4 years of the
11 date of original delivery of the used motor vehicle to the
12 consumer.